



December 19, 2000

Mr. Roy D. Hailey
Butler & Hailey
1616 South Voss Road, Suite 500
Houston, Texas 77057-2631

OR2000-4750

Dear Mr. Hailey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142834.

The Westbranch Community Association (the "association"), a property owners' association which you represent, received a request for access to all of its records. You state that in accordance with Article 1396-2.23.A. of the Texas Non-Profit Corporation Act, you will allow the requestor access to the responsive information. However, you argue that since the association does not meet the criteria set out in section 552.0035 of the Government Code, the association is not subject to the requirements of the Public Information Act (the "act"). We have considered your arguments and have reviewed the submitted information.

Section 552.0035 of the Government Code states:

A property owners' association is subject to [the act] in the same manner as a governmental body if:

- (1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;
- (2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and
- (3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

Therefore, a property owners' association is only subject to the act if it meets all three of the enumerated requirements.

You represent to this office that the association does not base its mandatory special or regular assessments, in whole or in part, on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation. Furthermore, you have provided for our review a portion of the association's restrictive covenants which supports your statements. Based on your representations and our review of the submitted information, we agree that the association does not meet the definition in section 552.0035 and, therefore, is not subject to the requirements of the act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

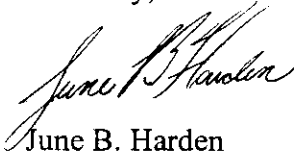
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* 52.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/er

Ref: ID# 142834

cc: Ms. Yvonne Silva
4906 Old Brickhouse
Houston, Texas 77041